

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

APR 16 2013

**Clerk, U.S. District and
Bankruptcy Courts**

KENNETH J. DILLON
4115 Wisconsin Avenue, N.W. #507
Washington, D.C. 20016

Plaintiff

v.

FEDERAL BUREAU OF INVESTIGATION
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535-0001

Defendant

Civil Action No.

Case: 1:13-cv-00532

Assigned To : Walton, Reggie B.

Assign. Date : 4/16/2013

Description: FOIA/Privacy Act

COMPLAINT

Plaintiff Kenneth J. Dillon, *pro se*, brings this action against Defendant Federal Bureau of Investigation ("FBI") to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As grounds for this, Plaintiff alleges:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff is a retired foreign service officer who teaches history at Marymount University (he will retire from that job in May, 2013). He has resided for 12 years at 4115 Wisconsin Avenue, N.W. #507, Washington, D.C. 20016 but intends to move overseas in summer, 2013. He is currently *pro se* to save money but may hire an attorney as the case progresses. A Ph.D historian, he has studied the 2001 anthrax mailings case, written various analyses of it, developed one of the main theories of the case (see

www.scienciapress.com/jdey-anthrax-mailings), and organized a seminar on it in 2011. He has performed this work on a *pro bono* basis and expects to continue to do so. (However, he is also eligible for the \$2,000,000 reward offered by FBI and the U.S. Postal Service in the 2001 anthrax mailings.) He intends to place any documents provided by FBI in response to his two FOIA requests on the well-known 2001 anthrax mailings case Website Case Closed as soon as he receives them so that researchers and the public can readily access them.

4. Defendant is an agency of the United States Government and is headquartered at 935 Pennsylvania Avenue, N.W., Washington, D.C. 20535-0001. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. Plaintiff has made two FOIA requests to Defendant. The first was dated July 17, 2011. It sought access to documents regarding the detention of Zacarias Moussaoui and Abderraouf Jdey in Minnesota on August 16, 2001, specifically:

- 1) A full internal FBI report on the arrest/detention. Minimally responsive to this request would be a complete list of the items in the possession of the two men, including the computer disk containing information about crop dusting reportedly in Moussaoui's possession but not included in the list of items the Department of Justice provided to the court in Moussaoui's trial; and the entire text on Abderraouf Jdey.**
- 2) The report of the arrest/detention that was sent to the intelligence community.**
- 3) Any other records related to the August 16, 2001 detention of Abderraouf Jdey.**

6. Defendant assigned the request #1170856. On January 11, 2012, Defendant denied the request on the grounds that it would be in violation of the Privacy Act, Title 5 U.S.C. § 552(a). Defendant asserted that Plaintiff had not furnished a public justification for release, but in fact Plaintiff's request had done so: Plaintiff is misleading the public about Abderraouf Jdey, a leading suspect in the 2001 anthrax mailings case. Defendant further claimed that Plaintiff had not furnished proof of death of Abderraouf Jdey; but in fact Plaintiff had furnished persuasive evidence that he died as the shoe bomber of American Airlines Flight #587 on November 12, 2001, and Plaintiff is well aware that it is correct. Defendant also did not offer a reason for withholding information on Moussaoui, a convicted felon now in Federal prison, and on a subject—the list of items in his possession—where Defendant had deliberately omitted a

key item, thereby misleading the court and the public. On February 10, 2012 Plaintiff appealed Defendant's denial of access to the Department of Justice, which remanded it on May 11, 2012 to Defendant, stating to Plaintiff "If you are dissatisfied with my action on your appeal, the Freedom of Information Act permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(1)(4)(B)."

7. Plaintiff's second FOIA request was dated March 30, 2012. It sought access thus:

I request FBI's entire file on al Qaeda operative Abderraouf Jdey.

8. Defendant assigned the request #1187039. On April 3, 2012, Defendant denied the request on the grounds of the Privacy Act, Title 5 U.S.C. § 552(a) as well as exemptions (b)(6) and (b)(7)(C). As in #6 above, Defendant asserted that Plaintiff had not furnished proof of death or public justification for release, but in fact he had done so. On April 10, 2012 Defendant appealed this denial to the Department of Justice. On September 26, 2012, the Department of Justice denied the appeal, stating that Defendant had correctly denied the request on the basis of 5 U.S.C. § 552(b)(7)(C) "because such records are categorically exempt from disclosure in the absence of an overriding public interest." In fact, as Plaintiff's request made clear, there is such an overriding public interest. Defendant is misleading the public about an issue of exceptional importance: Abderraouf Jdey is a leading suspect in the 2001 anthrax mailings case and in the November 12, 2001 crash of American Airlines Flight #587.

9. Because Defendant denied two requests for records on a matter of the highest importance to the American public, and because, in response to Plaintiff's appeals, the Department of Justice did not oblige it to provide the records, Plaintiff is deemed to have exhausted any and all administrative remedies with respect to these FOIA requests, pursuant to 5 U.S.C. § 552(a)(6)(C).

10. Plaintiff requests a jury trial.

COUNT 1
(Violation of FOIA, 5 U.S.C. § 552)

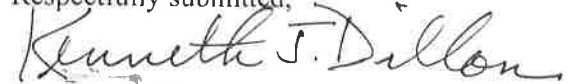
11. Plaintiff realleges paragraphs 1 through 9 as if fully stated herein.

12. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

13. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA requests and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA requests; (2) order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA requests and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA requests; (4) grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); (5) grant Plaintiff an award of \$2,000,000 in lieu of the reward money unfairly denied to him for providing FBI in 2004 the information and analysis required to identify Abderraouf Jdey as the anthrax mailer of 2001; and (6) grant Plaintiff such other relief as the Court deems just and proper.

Respectfully submitted,



Kenneth J. Dillon

pro se

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